In the High Court of Judicature at Madras

Dated: 10/12/2002

Coram

The Honourable Mr.Justice R.Jayasimha Babu
and
The Honourable Mrs. Justice Prabha Sridevan

Letters Patent Appeal No.208 of 1999
and
CMP.No.19220 of 1999

1. M/s Air India,
Bombay Airport,
Santa Cruz (East),
Bombay 400 029,
rep. By its Chairman/Secretary

2. M/s. Air India Cargo Section,
Madras 27. ..... Appellants

-Vs-

1. M/s. Asia Tanning Co., rep. By
its Partner K.Ubaidullah,
Jabeen Building,
12, Rama Pillai Street,
Madras 3.

2. Rudolf Resider,
Boston,
No.20 East Car Street,
Mars 02111 USA ..... Respondents

Appeal against the Judgment of the learned single Judge, dated 15.07
.1999 in A.S. No.991 of 1985.

!For Appellants : Mr.R.Subramanian
for M/s. King and Patridge

^For Respondent 1 : Mr.C.Seethapathy
for Mr.P.S.Raman

Second respondent : Given up.

:JUDGMENT

(Delivered by R.Jayasimha Babu, J.)
The appellant is a carrier to whom finished leather was entrusted by the respondent/plaintiff for carriage by air under an air waybill dated 23.02.1979 for being delivered to the consignee who was at Boston. The Cargo reached New York on 25.03.1979. From New York to Boston, the goods were carried by another Airline, Delta Airlines. But that was pursuant to an arrangement between the appellant and that Airline. The cargo reached Boston on 25/26.03.1979. There is no dispute about the fact that the goods landed safely and that the goods had not suffered any damage. The suit was filed in June 1981 after the expiry of the period of two years from the date of arrival of the goods at the destination.
2. The suit by the plaintiff as against the appellant and the consignee was on the ground that the goods ought not to have been delivered to the consignee without insisting on the production of the original air waybill and other documents, which had been sent by the plaintiff to it's bankers for being delivered to the consignee after collecting the value of the goods. The consignee had taken delivery of the goods without producing the original air waybill and without making the payment to the plaintiff's bank. According to the plaintiff the consignee had claimed damages for non delivery of a further quantity of 45,000 sq. ft. of finished leather.
3. The appellant denied it's liability but stated that there had been some negligence on the part of the other carrier in having delivered the goods without insisting upon the original air waybill. It also took the stand that the suit was filed beyond the period of limitation prescribed in Rule 30 of the Second Schedule to the Carriage by Air Act, 1972. The trial Court held that the appellant was liable but dismissed the suit on the ground of limitation.
4. The learned single Judge on appeal has held that Rule 30(1) which prescribes the period of limitation as two years reckoned from the date of arrival at the destination or from the date on which the aircraft ought to have arrived or from the date on which the carriage stopped, has to be read along with Rule 18 (1) of the same schedule which refers to damage sustained in the event of destruction or loss of or damage to any registered baggage or any cargo if the occurrence which caused the damage so sustained took place during the carriage by air.
5. Chapter III of the Second Schedule is titled as "Liability of the Carrier". Rules 29 and 30 therein read as under:
29 (1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.
(2) Questions of procedure shall be governed by the law of the Court seized of the case.
30 (1) The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

(2) The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.

6. The word 'damages' is not defined in the Rules. Rule 17 deals with the damages sustained in the event of death or injury to a passenger; Rule 18 deals with the damage sustained in the event of the destruction or loss of, or damage to, any registered baggage or any cargo; Rule 19 deals with the liability for damages occasioned by delay in the carriage by air of passengers, baggage or cargo.

7. Section 4 of the Act deals with the application of amended Convention (Warsaw Convention 1929 as amended by the Hague Protocol, 1 955) to India. Sub-section (1) thereof reads thus:

"The Rules contained in the Second Schedule being the provisions of the amended Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall subject to the provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage."

The Rule of Limitation prescribed in Rule 30 of the Second Schedule is thus a special Rule of Limitation in respect of carriage by air and will prevail over the general law of limitation. The Rules prescribe the forum and the period before which the action is to be brought. Those provisions dealing with the forum and the period of limitation are meant to be the law governing actions against air carriers. Questions of procedure are governed by the law of the Court in which the action is brought, as provided in Rule 29(2) of the Second Schedule to the Act.

8. The Rules contained in Chapter III of the Second Schedule are in relation to the claims for damages against the carriers in relation to, inter alia, the carriage of goods by air. Such carriage of goods is normally made only after an air waybill is issued for which provision is made in Rule 5 in Part III of Chapter II to the Second Schedule. Chapter II is titled as 'Documents of Carriage'. Part I of Chapter II is the passenger ticket; Part II of Chapter II is the Baggage check; and Part III of Chapter II is the air waybill.

9. Rule 5(1) which is in Part III of Chapter II provides that, '

Every carrier of cargo has the right to require the consignor to make out and handover to him a document called an "air waybill"; every consignor has the right to require the carrier to accept this document. Sub-rule (2) of Rule 5 provides that the absence, irregularity or loss of the air waybill does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Rule 9, be nonetheless governed by the Rules in the Second Schedule.

10. Rule 6(1) provides that the air waybill shall be made out by the consignor in three original parts and be handed over with the cargo. Rule 6(2) provides that the first part shall be marked "for the carrier", and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the cargo. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

11. Rule 8 sets out the minimum requirement of an air waybill. The air waybill shall contain an indication of the places of departure and

destination and other matters. Rule 10(1) provides that the consignor is responsible for the correctness of the particulars and statements relating to the cargo which he inserts in the air waybill. Rule 10(2) provides that the consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor.

12. Rule 11(1) provides that the air waybill is prima facie evidence of the conclusion of the contract, of the receipt of the cargo and of the conditions of carriage. Sub-rule (2) of Rule 11 provides that the statements in the air waybill relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill to have been checked by him the presence of the consignor, or relate to the apparent condition of the cargo.

13. Rule 12 (1) provides that subject to his liability to carry out his obligations under the contract of carriage, the consignor has the right, inter alia, to stop the carriage in the course of the journey on any landing or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air waybill, or by requiring it to be returned to the aerodrome of departure, subject to his exercising such right of disposition in such a way as not to prejudice the carrier or other consignors and on his repaying the expenses occasioned by the exercise of that right. Rule 12(4) provides that the rights conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Rule 13. Rule 13(1) provides that except in the circumstances set out in Rule 12 the consignee is entitled on arrival of the cargo at the place of destination to require the carrier to handover to him the air waybill and to deliver the cargo to him, on payment of the charges due and on compliance with the conditions of carriage set out in the air waybill.

14. Rule 14 provides that the consignor and consignee can respectively enforce all the rights given to them by Rules 12 and 13, each in his own name, whether he is acting in his own interest, or in the interest of another, provided that he carries out the obligations imposed on the contract.

15. Rule 15(2) provides that the provisions of the Rules 12, 13, 14 can only be varied by express provisions in the air waybill. Rule 1 5(3) provides that nothing in the rules prevents the issue of a negotiable air waybill.

16. It is clear from a reading of the provisions relating to the air waybill that the air waybill is a document provided for in the Rules which document when issued will be governed by the Rules, it being permissible to issue a negotiable air waybill. Claims for damages against the Air line in relation to the acts of omission or commission on the part of the Air line with regard to the cargo entrusted to it and covered by air waybill are claims for damages governed by the Second Schedule to the Rules and the Rule of limitation provided for in Rule 30 is the Rule of Limitation governing such claims. The fact that the term 'damages' is not defined in the Rules and that some types of damages are referred to in some of the Rules in Chapter III does

not imply that the period of limitation prescribed in Rule 30, will not apply when the damages is claimed on the ground of delivery of cargo without insisting upon the production of the air waybill sent by the consignor to the consignee.

17. In this case, the damage alleged is the delivery of the consignment to the consignee without insisting upon the original air waybill which, according to the plaintiff, has resulted in the consignee securing the possession of the goods without having first paid for the same. The rule of limitation provided in Rule 30 would clearly be attracted as the claim is in relation to the alleged wrongful delivery of goods without insisting upon the document of title even though the delivery was made to the person to whom it was intended to be delivered.

18. The trial Court was, therefore, right in the view it took, viz., that the special rule of limitation provided in Rule 30 would apply. The appeal is allowed.

Index : Yes
Website: Yes

To

1. The Registrar,
City Civil Court,
Madras - with records

2. The Record Keeper,
V.R. Section, High Court,
Madras.

Dev/